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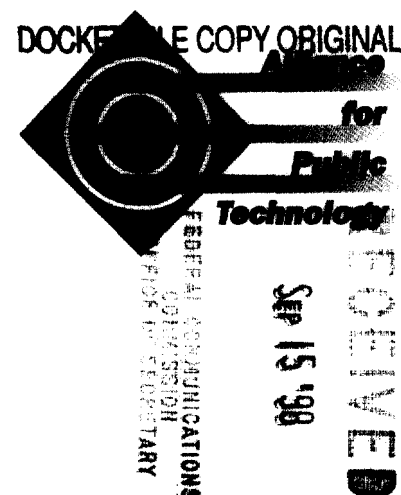
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purposes only.



September 15, 1998

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, DC 20554

RE: Comment of the Alliance for Public Technology  
In the Matter of Inquiry Concerning the Deployment of  
Advanced Telecommunications Capability to All Americans in  
a Reasonable and Timely Fashion, and Possible Steps to  
Accelerate Such Deployment Pursuant to Section 706 of the  
Telecommunications Act of 1996; CC Docket No. 98-146

Dear Ms. Salas:

At your suggestion during our conversation late yesterday afternoon, I have enclosed for immediate filing this morning an original and four copies of the above-referenced submission. These paper copies supplement the electronic submission that I transmitted prior to the close of business yesterday. As you know, my assistant attempted unsuccessfully to hand-deliver the enclosed copies yesterday when she arrived at the Commission just after 5:30 p.m. and following our discussion.

In addition to the comments, I have attached confirmation of their electronic filing. I printed the confirmation just after our conversation in which you explained the Commission's preference for electronic filings and stated your willingness to accept today paper versions of the submission. Therefore, I respectfully request that you accept the attached paper copies of the previously filed comments and consider the paper version as timely filed in Docket No. 98-146. Thank you in advance for your consideration.

Sincerely,

*Maureen A. Lewis*  
Maureen A. Lewis  
General Counsel

Attachments

DOCKET FILE COPY ORIGINAL

**Federal Communications Commission**

**The FCC Acknowledges Receipt of Comments From ...  
Alliance for Public Technology  
...and Thank You for Your Comments**

**Your Confirmation Number is: 1998914026365****Date Received: Sep 14 1998****Docket: 98-146****Number of Files Transmitted: 1**

<b>File Name</b>	<b>File Type</b>	<b>File Size (bytes)</b>
COMMENT	Microsoft Word	81921

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

**RECEIVED**

SEP 15 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
Inquiry Concerning the Deployment of )  
Advanced Telecommunications Capability )  
To All Americans in a Reasonable and )  
Timely Fashion, and Possible Steps to )  
Accelerate Such Deployment Pursuant )  
to Section 706 of the Telecommunications )  
Act of 1996 )

CC Docket 98-146

**COMMENTS OF THE ALLIANCE FOR PUBLIC TECHNOLOGY**

**INTRODUCTION**

The Alliance for Public Technology (APT) is pleased to submit these comments in response to the Commission's Notice of Inquiry (NOI) released on August 7, 1998 in the above-referenced docket. In evaluating whether advanced telecommunications capability is being deployed to all Americans in the "reasonable and timely" fashion that Congress mandated in Section 706 of the Telecommunications Act of 1996,<sup>1</sup> the Commission has requested comment from "those who could be most affected by the outcome."<sup>2</sup> APT represents almost 300 non-profit organizations and individuals that serve thousands of people, including low-income families, rural residents, consumers, minorities, senior citizens, people with disabilities, and small business owners whose lives could be greatly improved by access to advanced telecommunications networks. By making possible distance and life-long learning, telemedicine, and independent living for

<sup>1</sup> Codified at 47 USC Section 157 note.

<sup>2</sup> NOI at Para. 12.

senior citizens and people with disabilities, these and other creative applications delivered over high-speed, broadband networks can most benefit the nation's least advantaged residents by helping them to overcome the social, economic and political challenges they face.

For more than ten years, APT has consistently worked to ensure that all people of the United States, regardless of race, income level, urban or rural residence, or functional limitation have affordable and equitable access to information and telecommunications technology in their homes. As the telecommunications industry moves from a regulated monopoly to competition, which is a primary purpose of the 1996 Act<sup>3</sup>, APT fears that service providers in their quest to gain market share will neglect all but large businesses and other affluent customers to the detriment of ordinary residential and rural customers. The "electronic redlining" that is likely to result, particularly if ILECS establish separate unregulated data subsidiaries under the Commission's recent proposal,<sup>4</sup> may prevent all Americans from obtaining access to the advanced telecommunications capability that Congress promised in Section 706. Recent reports confirm that the "digital divide," into which millions are falling due to their lack of access to affordable information technology, is a persistent, pernicious problem.<sup>5</sup> Thus, APT firmly believes that the

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<sup>3</sup> The complete title of the Telecommunications Act of 1996 is "An Act to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." Public Law 104-104, February 8, 1996.

<sup>4</sup> Memorandum and Order, and Notice of Proposed Rulemaking In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability, et al. Docket No. 98-147 (released August 7, 1998) at Paras. 85-116.

<sup>5</sup> See, e.g., "Falling Through the Net II: New Data on the Digital Divide," National Telecommunications and Information Administration, U.S. Department of Commerce, July 1998; "Losing Ground Bit by Bit: Low Income Communities in the Information Age," Benton Foundation and the National Urban League, June 1998; and "Closing the Digital Divide: Enhancing Hispanic Participation in the Information Age," The Tomas Rivera Policy Institute, 1998.

Commission must take decisive action to mitigate the foreseeable adverse effects of imperfect competition in an industry of rapidly converging technologies.

Anticipating that the Commission's inquiry might substantiate apprehensions about disparate deployment patterns and demonstrate the need for immediate countervailing public policy to ensure universal access to advanced telecommunications services, APT filed a petition on February 18, 1998.<sup>6</sup> In that petition, APT recommended that the Commission adopt a two-pronged approach of removing barriers to infrastructure investment by incumbent and competitive telecommunications companies and aggressively promoting such investment. The Commission now seeks comments on a broad range of issues, including APT's proactive proposals that the agency: 1) work with states to adjust the productivity factor in the respective federal and state price cap formulas to hasten infrastructure investment by incumbent local exchange carriers (ILECs) through social contracts committing a portion of their efficiency savings to infrastructure deployment in underserved areas; 2) condition approval of telecommunications mergers on a requirement that the merged companies deploy infrastructure to residential and other less attractive markets; and 3) establish a federal-state policy framework that encourages community-based organizations and telecommunications providers to create partnerships in which the parties identify technology applications that address the life needs of marginalized communities and use the organizations' aggregated demand to pull investment there.<sup>7</sup> Below, APT briefly

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<sup>6</sup> Petition of the Alliance for Public Technology Requesting Issuance of Notice of Inquiry and Notice of Proposed Rulemaking to Implement Section 706 of the 1996 Telecommunications Act, RM-9244, filed February 18, 1998 (APT Petition).

<sup>7</sup> NOI at Paras. 71-72.

discusses each of these proposals and respectfully urges the Commission to implement them promptly.

1. Social Compacts Funded By Productivity Factor Adjustments

In its petition, APT suggests that the Commission and states adjust the productivity factors in the price cap formulas applicable respectively to the fees that interexchange carriers pay ILECs for local exchange access and to those that consumers pay ILECs for similar access<sup>8</sup>. APT advocates this market-oriented approach to hasten advanced network deployment in low income, rural and other marginalized communities that ILECs traditionally have considered unprofitable. Under a jointly coordinated federal and state process, the amount of the productivity factor adjustment would depend upon an ILEC's clear and convincing showing of how its accelerated investment was contributing to deployment of any advanced technology it chose. Regulators might limit the adjustment to 0.5%, or reduce or terminate it if initial or subsequent annual reports demonstrate an ILEC's failure to comply with its deployment plans.

As a substitute for rate of return regulation, the price cap regulatory regime offers the FCC, and those states that utilize productivity factors in determining dominant carriers' basic service rates, an effective model for pursuing the ubiquity goal of Section 706 in an increasingly competitive environment. The suggested approach is not only consistent with Congress' intent as evidenced by Section 706's specific reference to price caps as a regulatory tool for promoting deployment of digital networks, it also comports with the "network upgrade" policy that the Commission is utilizing in the cable industry. That policy enables cable companies to execute social contracts that afford them pricing

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<sup>8</sup> APT Petition at 29-33.

flexibility for newly introduced regulated services, although rates for existing services remain subject to price caps. In exchange, cable companies agree to use a portion of their increased profits to finance system upgrades.<sup>9</sup> In view of the Commission's desire to facilitate rapid deployment of ubiquitous advanced telecommunications networks by all segments of the communications industry<sup>10</sup> and to harmonize its regulatory treatment of different technologies,<sup>11</sup> APT strongly recommends that the Commission, in coordination with relevant states, adopt social contracts that reflect productivity index adjustments to promote increased deployment in underserved areas.

2. Merger Conditions Requiring Infrastructure Deployment in Impoverished, Rural and Other Marginalized Communities

In the wake of recently announced plans for a new round of consolidation in the telecommunications industry, APT believes now, more than ever, that the Commission should incorporate into its evaluation of whether any proposed transaction serves the "public interest, convenience and necessity,"<sup>12</sup> consideration of whether it also furthers Section 706's advanced universal service goal.<sup>13</sup> If the Commission determines that approval is appropriate, then APT urges the Commission to require the surviving company to use some portion of the "synergy savings" to deploy and upgrade telecommunications infrastructure in historically underserved communities.

As APT has previously pointed out, the Commission has already successfully employed social contracts to stimulate cable system improvements. Similarly, the Commission might follow the example of the California Public Utility Commission,

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<sup>9</sup> See APT Petition at 32.

<sup>10</sup> See NOI at Para. 12.

<sup>11</sup> NOI at Para. 4.

<sup>12</sup> 47 U.S.C. Sec. 310(d). See also, 47 U.S.C. Sec. 214 (a).

<sup>13</sup> See APT Petition at 33-34.

which approved SBC's merger with Pacific Telesis on the condition that SBC establish a Community Technology Fund to finance construction of advanced network facilities for low income, rural and other consumers in California.<sup>14</sup> Through its use of social contracts in this manner, the Commission can monitor advanced infrastructure deployment to ensure that the proposed transaction helps, not hinders, the ubiquity goal of Section 706.

3. Federal-State Policies to Encourage Partnerships that Nurture Community-Driven Demand for Technology Applications that Pull Investment for Advanced Infrastructure into Underserved Communities

APT contends that as competition emerges, it is imperative that the Commission join with the states to establish policies that perpetuate partnerships between telecommunications providers and community-based organizations to nurture demand for advanced services in communities where carriers presume it does not exist at sufficient levels to warrant investment. This unique recommendation recognizes that as competition grows, low income, rural and high-cost areas risk being bypassed by the information superhighway unless the Commission and states adopt policies to facilitate communities and telecommunications providers working together to aggregate effective demand for community based applications of information technologies. APT believes that once developed, the communities' aggregated demand will attract investment there. Because states are closest to communities where market forces are actually playing out, APT is urging the FCC to create a federal/state "joint board" to develop options and

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<sup>14</sup> Order Denying Rehearing and Modifying D.97-03-067, In the Matter of the Joint application of Pacific Bell Telesis Group (Telesis) and SBC Communications, Inc. (SBC) for SBC to Control Pacific Bell (U1001), Which Will Occur Indirectly as a Result of Telesis Mergers With a Wholly Owned Subsidiary of SBC, SBC Communications (NV) Inc., Decision 97-11-05 (Nov. 5, 1997). —



provide a resource base for implementing the recommendation along the lines suggested in APT's filing.<sup>15</sup>

APT believes strongly that the proactive policies it is suggesting for the Commission and its state counterparts are crucial to the work of community-based organizations, which are also the primary membership base of APT. Underlying our advocacy is a recognition that the convergent communications and information technologies of the digital age are shaping the future of community life. As market forces are unleashed to develop and deploy them, however, there is growing concern from the President on down that the marketplace is actually laying the groundwork for further economic and social polarization of our society.

As we point out in our Section 706 filing, the reason for this is clear enough. Competitive providers in the converged communications industry lack sustainable marketing vehicles or processes for accessing the innovative capacity of community-based organizations, small businesses and residents of marginalized communities. There are no viable, on-going relationships with competitive providers for addressing the pent-up desire in these communities to participate actively and effectively in the development and marketing of technology applications, which are specifically targeted to advance their economic and social status.

While recognizing that there are a number of tested options for market-oriented, community-driven demand aggregation that may be appropriate for policy implementation embracing devolution, APT has advanced a generic option built on a CBO/community-based model for participatory action research. The emphasis is on action--bringing community leaders (who function as the "interface" for community

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<sup>15</sup> See APT Petition at 34-41.

aspirations) into market-oriented relationships with competitive providers and product development/marketers in the converged communications industry. The strategy is to open up viable options for determining how community-driven applications development and deployment can generate effective demand among low-income populations, provide an expanded community base for demand aggregation and market-building, and bring marginalized communities more fully into the operation of the marketplace.

#### 4. Price Reform and Universal Service

Pricing regulation that permits substantially lower residential than business rates without an adequate cost justification seems to attract investment disproportionately to the business markets, leaving residential customers without the benefit of new upgraded systems. While APT continues to adhere to this view, it premises support for any price reform on fully implemented and operational state and federal universal service “safety nets.” Such safety nets, through explicit and adequate funding would support, at a minimum, basic services outlined in the Commission’s universal service order for low income consumers and residents of high cost areas, as well as advanced services for schools, libraries and rural health clinics. In our view, gradually implemented price reform would provide the proper economic signals to stimulate facilities based competition throughout the country as the 1996 Act intends.<sup>16</sup>

### CONCLUSION

The Commission has begun its important evaluation of the progress of deployment of advanced telecommunications capability to all Americans under Section

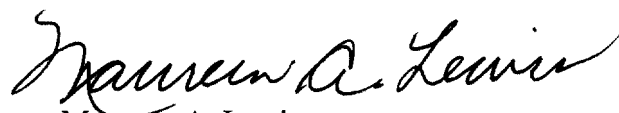
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<sup>16</sup> APT Petition at 25-26.

706. The information it gathers during the inquiry is critical to the nation's future, for it will help the Commission determine what actions may be necessary to accelerate advanced infrastructure deployment to ensure that no one is consigned to the ranks of the "technologically disadvantaged." Therefore, APT applauds Chairman Kennard's announced plans to augment the proceeding with field hearings.<sup>17</sup> Such hearing will enable people throughout the country to provide the Commission with firsthand accounts of the availability in their communities of advanced telecommunications networks and their need for the potentially life-enhancing benefits that digital telecommunications technology can provide.

APT respectfully urges the Commission to adopt APT's recommendations for proactive measures to stimulate investment in advanced telecommunications infrastructure. The "digital divide" is widening and threatens our nation's future unless the Commission fully and promptly implements Section 706.

Respectfully submitted,



Maureen A. Lewis  
General Counsel

Alliance for Public Technology  
901 15<sup>th</sup> Street, N.W., Suite 230  
Washington, DC 20038-7146  
(202)408-1403

September 14, 1998

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<sup>17</sup> See Remarks by William E. Kennard, Chairman, Federal Communications Commission to the National Urban League, August 3, 1998, <http://www.fcc.gov.Speeches/kennard/spwek824.html> (downloaded August 5, 1998) at 6.

## CERTIFICATE OF SERVICE

I, Ginger Beverly, a secretary for Alliance for Public Technology, hereby certify that on the 14<sup>th</sup> day of September, 1998, copies of the foregoing "Inquiry Concerning the Deployment of Advanced Telecommunications Capability To All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996"; CC Docket 98-146 were hand delivered to:

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Chief, Common Carrier Bureau  
Federal Communications Commission  
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Commissioner Susan Ness  
Federal Communications Commission  
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Mr. Robert M. Pepper  
Chief, Office of Plans and Policy  
Federal Communications Commission  
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Mr. Lawrence E. Strickling  
Deputy Chief, Common Carrier Bureau  
Federal Communications Commission  
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Commissioner Harold Furchtgott-Roth  
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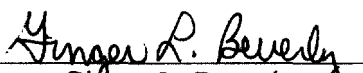
Mr. Michael Nelson  
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Washington, DC 20554

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